

No. 13294

United States
Court of Appeals
for the Ninth Circuit.

UNITED STATES OF AMERICA,

Appellant,

vs.

WILLIAM E. HOTH, ROSE E. HOTH and GUY
F. WHITMAN,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Western District of Washington,
Northern Division



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL

J. CHARLES DENNIS, and
KENNETH J. SELANDER,
Attorneys for Appellant,
1017 U. S. Courthouse,
Seattle 4, Washington.

RAYMOND A. REISER,
Attorney for William E. Hoth and
Rose E. Hoth, Appellees,
648 Central Building,
Seattle 4, Washington.

DONALD M. BUSHNELL,
Attorney for Guy F. Whitman, Appellee,
P. O. Box 296,
Ferndale, Washington.



United States District Court, Western District
of Washington, Northern Division

Civil Action—No. 2735

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM E. HOTH, Greeley, Colorado; MRS.
ROSE E. HOTH, Box 83, Wheatland, Wyoming;
DAVID A. WHITMAN, 19 West Thomas
Street, Seattle, Washington; PHILIP K.
WHITMAN, c/o Phoenix Mutual Life Insurance
Company, New York, New York; GUY F.
WHITMAN, Route No. 2, Blaine, Washington;
and PAUL DONLEY, 4170 - 17th Street, San
Francisco, California,

Defendants.

COMPLAINT IN THE NATURE OF A BILL
OF INTERPLEADER

Comes now the plaintiff, United States of
America, by its attorney, J. Charles Dennis, United
States Attorney in and for the Western District of
Washington, and brings this action against William
E. Hoth, Mrs. Rose E. Hoth, David A. Whitman,
Philip K. Whitman, Guy F. Whitman and Paul
Donley, and would respectfully show the Court as
follows:

I.

That this is an action in the nature of a bill of
interpleader brought by the plaintiff pursuant to

Section 19 of the World War Veterans Act of 1924, as amended, and Section 617 of the National Service Life Insurance Act of 1940, as amended (Sections 445 and 817, Title 38, U.S.C.A.), against the defendants herein named, who have, or claim to have, an interest in a certain policy of National Service Life Insurance issued by the plaintiff, United States of America, to John M. Donley (Army Serial No. 39, 173, 318); that the present addresses of the defendants are as follows: William E. Hoth, Greeley, Colorado; Mrs. Rose E. Hoth, Box 83, Wheatland, Wyoming; David A. Whitman, 19 West Thomas Street, Seattle, Washington; Philip K. Whitman, c/o Phoenix Mutual Life Insurance Company, New York, New York; Guy F. Whitman, Route No. 2, Blaine, Washington; and Paul Donley, 4170 - 17th Street, San Francisco, California.

II.

That the insured, John M. Donley, entered into active duty in the United States Army on April 10, 1942, and that he died on July 12, 1943, while in the service; that while in the aforesaid service, the insured, on June 3, 1943, applied for and was granted a \$10,000.00 contract of National Service Life Insurance (identified by Certificate No. N-11 661 432), in which he designated Barbara Mae Donley, described as wife, as sole beneficiary, and that the insurance contract was in full force and effect at the time of the insured's death.

III.

That by virtue of the death of the insured, John

M. Donley, the insurance contract issued to him matured and insurance benefits were paid to Barbara Mae Donley, widow and designated sole beneficiary, in monthly installments of \$55.10, from July 12, 1943, through January 11, 1946, totaling the sum of \$1,653.00; that the designated sole beneficiary died on December 25, 1945; that, while the plaintiff stands ready and willing to pay any and all further sums of money due under the policy to the person or persons lawfully entitled thereto, a dispute as to the person or persons entitled to receive such payments has arisen, and that, by reason of the conflicting claims and interests of the defendants herein, doubt exists as to which of the defendants is entitled to receive the said insurance, and this plaintiff cannot safely pay the same to any one or more of them without the aid of this court; that the plaintiff, United States of America, disclaims any interest in said funds except to pay the same to the person or persons found by the court to be legally entitled thereto.

IV.

That claims alleging entitlement to the benefits of the aforesaid insurance were filed in the Veterans Administration by the defendants, William E. Hoth, Mrs. Rose E. Hoth, David A. Whitman, Philip K. Whitman, Guy F. Whitman, and Paul Donley.

V.

That notice of the intention to institute this action was given to each of the said defendants, except Paul Donley, by letters dated September 7, 1950,

and that as to the said Paul Donley, notice was given by letter dated December 15, 1950, from the Veterans Administration; the said notices were given pursuant to Section 19 of the World War Veterans Act of 1924, as amended (Section 445, Title 38, U.S.C.A., incorporated by reference in Section 817 of the said Title).

Wherefore, this plaintiff prays that the defendants, and each of them, be cited to appear and answer herein and that the court determine the rights of said defendants, and each of them, and direct payment of said insurance benefits to such person or persons as the court may determine is entitled thereto, and that this plaintiff, the United States of America, be forever released from any and all liability on account of the insurance contract issued to John M. Donley, and be granted any further relief to which the plaintiff may show itself to be justly entitled.

/s/ J. CHARLES DENNIS,
United States Attorney.

[Endorsed]: Filed March 8, 1951.

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the Above-Entitled Court:

You will please issue Summons and deliver to the Marshal for service, together with copies of Complaint.

/s/ J. CHARLES DENNIS,
United States Attorney.

[Endorsed]: Filed March 8, 1951.

[Title of District Court and Cause.]

ORDER FOR ISSUANCE OF SUMMONS

The United States of America having filed a complaint in the nature of a bill of interpleader in the above cause, the Clerk of the above-entitled court is hereby directed to issue a summons directing the defendants above named, and each of them, to appear on Monday, May 14, 1951, and the United States Marshals for the various districts where the defendants reside are hereby directed to serve the same upon the defendants named therein.

Done in Open Court this 12th day of March, 1951.

/s/ JOHN C. BOWEN,
United States District Judge.

[Endorsed]: Filed March 12, 1951.

[Title of District Court and Cause.]

SUMMONS

To the above-named Defendants: William E. Hoth, Mrs. Rose E. Hoth, David A. Whitman, Philip K. Whitman, Guy F. Whitman, and Paul Donley.

You are hereby summoned and required to serve upon: J. Charles Dennis, U. S. Attorney, plaintiff's attorney, whose address is 1017 United States Courthouse, Seattle 4, Washington, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[Seal] MILLARD P. THOMAS,
Clerk of Court.

By /s/ WILLIAM FERGUSON,
Deputy Clerk.

Date: March 8, 1951.

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the ... day of, 19.., I received this summons and served it together with the complaint herein as follows: Returned Unserved Request, U. S. Attorney,

March 15, 1951. (See Later Order of March 12, 1951.)

J. S. DENISE,
U. S. Marshal.

By /s/ DONALD F. MILLER,
Chief Deputy.

[Endorsed]: March 14, 1951.

UNITED STATES MARSHAL'S RETURN

Re: Western District of Washington, Seattle, Washington. United States v. William E. Hoth, et al.—Civil Action No. 2735.

I hereby certify and return that on the 16th day of March, 1951, I received a summons together with a complaint in the nature of a Bill of Interpleader, in the above-entitled case, at Cheyenne, Wyoming, and I served the summons together with the complaint in the nature of a Bill of Interpleader upon Mrs. Rose E. Hoth, personally and in person, at her home, at Wheatland, Platte County, Wyoming, on March 16th, 1951.

EARL R. BURNS,
United States Marshal, District of Wyoming.

By /s/ GEORGE G. SMITH, JR.,
Deputy.

[Endorsed]: Filed March 19, 1951.

[Title of District Court and Cause.]

RETURN ON SERVICE OF WRIT

United States of America,
Western District of Washington—ss.

I hereby certify and return that I served the annexed Summons and Complaint on the therein-named Guy E. Whitman by handing to and leaving a true and correct copy thereof with him personally at Rt. 2, Blaine, Wash., in said District on the 23rd day of March, 1951.

J. S. DENISE,
U. S. Marshal.

By /s/ DONALD F. MILLER,
Chief Deputy.

[Endorsed]: Filed March 27, 1951.

[Title of District Court and Cause.]

SUMMONS

To the above-named Defendants: William H. Hoth,
Mrs. Rose E. Hoth, David A. Whitman, Philip
K. Whitman, Guy F. Whitman and Paul Don-
ley:

You, and Each of You, are hereby summoned and required to serve upon J. Charles Dennis, United States Attorney for the Western District of Washington, plaintiff's attorney, whose address is 1017

United States Courthouse, Seattle 4, Washington, on or before Monday, May 14, 1951, an answer to the complaint which is herewith served upon you. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: March 12, 1951.

MILLARD P. THOMAS,
Clerk of Court.

By LEE L. BRUFF,
Deputy Clerk.

Returns on service of writ acknowledged.

[Endorsed]: Filed March 27, 1951.

[Title of District Court and Cause.]

APPEARANCE

To: J. Charles Dennis, United States Attorney for the Western District of Washington, Attorney for the United States of America in the above-entitled action, and to Mrs. Rose R. Hoth, David A. Whitman, Philip K. Whitman, Guy P. Whitman and Paul Donley.

You, and Each of You, will hereby please take notice that Raymond A. Reiser, attorney at law, hereby enters his appearance for the defendants William N. Hoth and Rose R. Hoth, his wife, and you will please serve all notices, pleadings, and

papers in connection with said case upon him at his address stated below.

/s/ RAYMOND A. REISER,
Attorney for Defendants William N. Hoth and Rose
R. Hoth, his wife.

Receipt of copy acknowledged.

[Endorsed]: Filed May 8, 1951.

[Title of District Court and Cause.]

APPEARANCE

To: J. Charles Dennis, United States Attorney for the Western District of Washington, Attorney for the United States of America in the above-entitled action, and to William E. Hoth, Mrs. Rose E. Hoth, David A. Whitman, Philip K. Whitman and Paul Donley.

You, and Each of You, will hereby please take notice that Donald M. Bushnell, attorney at law, hereby enters his appearance for the defendant Guy F. Whitman, and you will please serve all notices, pleadings and papers in connection with said case upon him at his address stated below.

/s/ DONALD M. BUSHNELL,
Attorney for Defendant Guy
F. Whitman.

[Endorsed]: Filed March 15, 1951.

[Title of District Court and Cause.]

ANSWER TO INTERPLEADER AND
STATEMENT OF CLAIM

Now comes Guy F. Whitman by Donald M. Bushnell, his attorney, and for answer to the Complaint in this Cause, states:

I.

That he admits the allegations of Paragraphs I and III in the Complaint.

II.

That he admits the allegations of Paragraph III except that he has no information sufficient to form a belief as to the amounts paid to Barbara Mae Donley.

III.

That he admits the allegations of Paragraphs IV and V of said Complaint.

IV.

That by virtue of the laws of the United States in such case made and provided the monthly installments under the insurance policy mentioned in the Complaint remaining unpaid at the death of Barbara Mae Donley, the named beneficiary therein, became payable first to the child or children of the said insured, John M. Donley, or if there were no such child or children then to his parent or parents, or if there were no parent or parents then became payable to such person who may last have stood in the position of in loco parentis to the said John M.

Donley; that the said John M. Donley left no child or no parent him surviving; that this defendant, Guy F. Whitman, was the stepfather of the said John M. Donley, having married his mother at the time when the said John M. Donley was approximately two years old and this defendant stood as a father to and in loco parentis to the said John M. Donley during all of the remaining lifetime of the said John M. Donley, and particularly in that the said John M. Donley resided in the home of this defendant until he was approximately eleven or twelve years of age, and then was removed by a legal guardian appointed over him and was in the custody of such guardian for approximately six or seven years, and thereafter, and voluntarily left the custody of the said guardian and resumed living in the home of this defendant and under his parental guidance and in the relationship to him of in loco parentis; that this defendant was the last and the only person who stood in the relation of in loco parentis to the said John M. Donley.

Wherefore This Defendant Prays that this Court enter judgment awarding to him the benefits and payments available under the policy of life insurance mentioned in the said Complaint and for his costs in this action and for such other relief as may be proper.

/s/ DONALD M. BUSHNELL,
Attorney for Defendant Guy
F. Whitman.

[Endorsed]: Filed March 15, 1951.

[Title of District Court and Cause.]

ANSWER TO BILL OF INTERPLEADER AND
STATEMENT OF CLAIM

Come Now Rose E. Hoth and William E. Hoth, by their attorney, Raymond A. Reiser, and for answer to the complaint in this cause allege:

I.

In answer to Paragraphs I and II thereof, defendants admit the same.

II.

In answer to Paragraph III thereof, the defendants admit the same except they allege they have not sufficient information on which to base a belief as to the amounts paid to Barbara Mae Donley.

III.

Answering Paragraphs IV and V thereof, the defendants admit the same.

By Way of Further Answer and Statement
of Claim

I.

The benefits of the National Service Life Insurance on the life of the insured John M. Donley, identified by certificate number N11661432, are hereby claimed by the defendants William E. Hoth and Rose Hoth on the grounds and for the reason that they were the last persons who stood in loco parentis to the decedent at the time of his death and for more than one year prior to his entry into the military service.

II.

In support thereof defendants allege that John Donley, deceased, was born on July 28, 1914, near Bayard, Morrill County, Nebraska, the son of John Franklin and Sadie A. Donley; that the father of the insured died on or about February 7, 1916, survived by his widow, the insured, and Paul Donley; that in May of 1917, Sadie A. Donley married Guy F. Whitman, a claimant herein, at Bridgeport, Nebraska; that this family moved to Zion, Illinois, the following year; that Sadie A. Donley served as guardian of the estates of her two children until the fall of 1924; that at the death of their father, the deceased, John M. Donley, and his brother inherited in excess of \$5,000.00; that the claimant Guy F. Whitman and Sadie A. Donley expended the bulk of the estate of the children for living expenses and without accounting for same; that the claimant Guy F. Whitman provided little or nothing toward the care, support and maintenance of his stepchildren; that Sadie A. Whitman died in the fall of 1924; that on October 5, 1925, one Ralph J. Dady was appointed guardian of the estates of the children by the Probate Court of the State of Illinois, County of Lake, in cause number 14071; that said appointment was necessitated by virtue of the lack of interest, attention and affection on the part of the stepfather of the children following the death of his wife, Sadie A. Whitman.

That early in 1925, one Will Donley, an uncle of John and Paul Donley, visited his nephews, then living with Guy F. Whitman, and, being dissatisfied with the living conditions of his nephews, sought

their custody and control; that Guy F. Whitman readily and voluntarily relinquished the care, custody and control of these children and delivered them to the said Will Donley; that on or about March 15, 1925, the said Guy Whitman, having remarried, relinquished custody and control of the children to the said Will Donley, and he voided himself of any parental control or authority over them; that the said Will Donley, finding himself financially unable to care for the children, approached the defendants Rose Hoth, the aunt of the children John and Paul Donley, and William E. Hoth, her husband, an uncle by marriage, and requested them to care for the children; that in answer to this request, the said Rose Hoth and William E. Hoth sent Will Donley, the sum of \$100.00 in payment of transportation expense for the children; that the deceased, John M. Donley, and his brother Paul came to live with the defendants William E. Hoth and Rose Hoth during the month of August, 1925, and remained in their household subject to their discipline, care and affection from that time until subsequently emancipated; that on or about March 23, 1926, Rose Hoth obtained letters of guardianship from the District Court of Platt County, Wyoming, for the purpose of requiring an accounting of Ralph J. Dady and did subsequently obtain an accounting and a discharge of Ralph J. Dady as guardian of the estate of the children and recovered approximately \$3000.00, representing the balance due on a judg-

ment against the surety of Sadie A. Whitman; that said sum was subsequently expended by the said Rose Hoth for the care and maintenance of John and Paul Donley, but said sum represented a mere pittance of the cost of the care, support and maintenance of John and Paul Donley, and merely served to supplement the funds expended for their care and support; that during the ensuing years, the defendants exercised parental control and authority over John and Paul Donley and looked after and provided for their education, training and discipline until such time as they were fully grown and capable of taking care of themselves; that said guidance, influence and control was exercised by the defendants Rose and William E. Hoth over the said John Donley until his third year of high school, at which time he sought employment on local ranches, maintaining his home, however, with the Hoths until the summer of 1934; that during the ensuing years, the insured was emancipated and engaged in various types of employment throughout Wyoming, Colorado, and Washington; that in the summer of 1934, he contacted the defendant Guy F. Whitman regarding job conditions in the State of Washington, and, being favorably impressed with the existing conditions in Washington, visited the said Guy F. Whitman at his home in Wenatchee, Washington, remaining with him several months until his arrest for car theft in December of 1934; that the said insured was sentenced to the Washington State Reformatory where he remained until August of 1935; that in November of 1935, the insured enrolled in the Civil-

ian Conservation Corps where he remained for a period of approximately nineteen months, being discharged therefrom on May 27, 1937; that the insured enlisted in the United States Army on April 10, 1942, and subsequently married Barbara Mae Dymont of Leavenworth, Washington, and died without issue surviving.

That subsequent to the abandonment of John and Paul Donley on or about March 15, 1925, the defendant Guy F. Whitman expressed no interest whatsoever in the welfare of the insured and his brother Paul, but, to the contrary, deplored their existence; that the said Guy F. Whitman, though the stepfather of the insured, at no time was in loco parentis to the insured, and that following the death of their mother, Sadie Whitman, the only parental authority to which John Donley was ever subjected was that of William E. and Rose Hoth, who last stood in the position of loco parentis to the insured since August of 1925.

Wherefore, the defendants William E. and Rose Hoth pray that this court enter judgment denying the claim of Guy F. Whitman and awarding to them the benefits of the National Service Life Insurance policy alleged in the complaint together with their costs and disbursements herein, together with such other relief as to the court may be deemed equitable in the premises.

/s/ RAYMOND A. REISER,

Attorney for Defendants William E. and Rose Hoth.

[Endorsed]: Filed June 1, 1951.

[Title of District Court and Cause.]

AFFIDAVIT IN RESISTANCE TO MOTION
FOR CHANGE OF SITUS OF TRIAL

Comes Now William E. Hoth and Rose Hoth, his wife, defendants herein, by their attorney, Raymond A. Reiser, and oppose the motion of the defendant Guy F. Whitman that the trial of this cause be held at Bellingham, Washington, and respectfully request the court to hear this matter at Seattle, Washington. This motion is based on the affidavit hereinafter set forth.

/s/ RAYMOND A. REISER,
Attorney for Defendants William E. Hoth and Rose
E. Hoth.

State of Washington,
County of King—ss.

Raymond A. Reiser, being first duly sworn on oath, deposes and says:

That he is the attorney of record for Rose E. Hoth and William E. Hoth, defendants herein; that the defendant William E. Hoth plans on traveling from Denver, Colorado, to Seattle for this trial; that the expense entailed for this travel is considerable; that William E. Hoth is a pensioner and short of funds, and that the defendant William E. Hoth should not be obligated to further expense in traveling from Seattle to Bellingham for the convenience of Guy F. Whitman; that counsel represents two of the defendants herein; that the transfer

of this cause to Bellingham would necessitate additional expense to the said William E. Hoth as well as to the United States Government, and that the trial of this matter can best be heard in Seattle, King County, Washington.

/s/ RAYMOND A. REISER.

Subscribed and Sworn to before me this 11th day of June, 1951.

/s/ F. M. REISCHLING,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsed]: Filed June 12, 1951.

[Title of District Court and Cause.]

MOTION

Now Comes Guy F. Whitman, Defendant herein, and by Donald M. Bushnell, his attorney, and respectfully moves that trial of this Cause be held at Bellingham, Washington. This Motion is based upon the Affidavit hereinafter set forth.

/s/ DONALD M. BUSHNELL,
Attorney for the Defendant Guy F. Whitman, Fern-
dale, Washington.

Affidavit

State of Washington,
County of Whatcom—ss.

Donald M. Bushnell, being first duly sworn, states that he is the Attorney of record for Guy F. Whit-

man, defendant and movant above; that said Guy F. Whitman and his Attorney both reside in Whatcom County, Washington, and that the said Defendant is the only party who has appeared residing in the State of Washington.

/s/ DONALD M. BUSHNELL.

Subscribed and sworn to before me this 6th day of June, 1951.

[Seal] DAILY S. WYATT,
Notary Public in and for the State of Washington,
Residing at Ferndale.

Receipt of copy acknowledged.

[Endorsed]: Filed June 12, 1951.

[Title of District Court and Cause.]

INTERROGATORIES

Comes Now Rose Hoth and William E. Hoth, by Raymond A. Reiser, their attorney, and under the provisions of Rule 33, Federal Rules of Civil Procedure, propounds the following interrogatories to Guy F. Whitman, defendant herein, for answer:

1. When and where was John Donley born?
2. When and where were you married to Sadie A. Donley?
3. How many children were born to you and Sadie A. Donley during your marriage?
4. At the time of your marriage to the said

Sadie A. Donley, how old were Paul and John Donley?

5. What was your occupation and salary at the time of your marriage to Sadie A. Donley?

6. Where did you live following your marriage to Sadie A. Donley?

7. Did Paul and John Donley live with you and Sadie A. Donley?

8. When did you move to Zion, Illinois?

9. What was your occupation while in Zion, Illinois? Your salary?

10. Who were the members of your household during the time you lived in Zion, Illinois?

11. At what address did you live in Zion, Illinois?

12. Paul and John attended what schools?

13. Did you pay tuition for either John or Paul while attending school in Zion, Illinois?

14. Do you have any record of expenses paid by you on behalf of John Donley while he was a member of your household up to and including the time he went to live with his uncle?

15. Did you make application to be appointed guardian of the estates of John and Paul Donley following the death of their mother? If not, why?

16. What was the date of death of Sadie A. Donley?

17. When did you remarry following the death of Sadie A. Donley?

18. Who did you marry? Was it one Elinor Martin?

19. Following the death of Sadie A. Donley, who

cared for John and Paul Donley prior to your remarriage?

20. How long were John and Paul Donley in your household following your remarriage? Who were the members of this household?

21. Have you any record of expenses during the time in which John and Paul Donley were members of your household following the death of their mother? What records do you have?

22. What proportion of your income was spent for the care, maintenance and support of John and Paul Donley following the death of their mother?

23. Prior to the death of the mother of John and Paul, did she give you any specific instructions regarding their custody and support in the event of her death? If so, what were these instructions?

24. When were John and Paul Donley taken from you?

25. What were the circumstances surrounding the relinquishment of these children?

26. To whom were they given?

27. Did you ever write W. H. Donley, or any other person, in the spring of 1925 advising him that you were unable to take care of the children and would like him to take them?

28. If you contacted someone other than W. H. Donley, who did you contact?

29. Do you have the letters in response to your inquiry?

30. Do you have the letters written by the relatives of the deceased Sadie Donley surrounding the acceptance of the children by them?

31. If so, where are these letters and in whose possession are they?

32. Did you ever contact anybody with regard to the adoption of John and Paul Donley? If so, who? When? Where?

33. Did you relinquish custody of John Donley to anyone in 1925? If so, to whom?

34. In your complaint, you state that "John M. Donley resided in the home of this defendant until he was removed by a legal guardian appointed over him * * *," what was the name of that guardian?

35. Why was he appointed?

36. What attempt did you make to be appointed? Result?

37. How did W. H. Donley acquire possession of John and Paul Donley?

38. How much money did you give John and Paul Donley at the time you relinquished their possession?

39. What luggage, if any, did John take with him when he left with W. H. Donley?

40. In the years immediately following the relinquishment of possession to W. H. Donley, how much did you contribute to W. H. Donley or others for the care, support and maintenance of John and Paul Donley?

41. What records did you keep of these contributions?

42. Did you submit an income tax return for 1925, 1926, 1927 and the years through 1933?

43. Where did you submit these income tax returns?

44. Did you claim John and Paul Donley on your income tax returns as dependents for the period 1925 to 1935? If not, whom did you claim as dependent?

45. Who were the members of your household during these years?

46. Did you ever send any clothing or gifts to John and Paul Donley during these years?

47. If so, when and in what amounts? Through whom did you send these gifts?

48. When the children were sent from the residence of W. H. Donley to Rose and William Hoth, did you pay their transportation?

49. If so, in what amount and to whom? If not, who did?

50. Did you receive any letters from John and Paul during the period 1925 through 1935?

51. Do you have these letters?

52. Did you write John or Paul Donley during this period? If so, how often?

53. Did you pay any medical, dental, hospital or tuition fees for John or Paul Donley during the period of 1925 to 1933?

54. If so, when, where and in what amounts?

55. Where did you live during the period 1925-1935?

56. What was your occupation? Your salary?

57. Did John Donley ever contact you following

his departure from your home in 1925? If so, when? What were the circumstances?

58. What do you know of the circumstances surrounding the departure of John from the Hoth household?

59. Did he contact you regarding job conditions in Washington sometime early in 1934?

60. When did he first come to see you following this contact?

61. Where were you living at the time?

62. Who were the members of your household?

63. How old were you then?

64. What was your occupation in 1934?

65. What was your salary for the years 1934 through 1942?

66. Did you file income tax returns for the years 1934 through 1942? If so, where?

67. Whom did you claim as dependents on your income tax returns for the years 1934 through 1942?

68. How much did John Donley contribute to your support during each year commencing in 1934 and ending in 1941?

69. How much did you contribute for the care, support and maintenance of John Donley during the years 1934 through 1941, inclusive?

70. What records, if any, do you have of expenses paid by you for the care, support and maintenance of John Donley during this time?

71. Where were you living at the time John was arrested for car theft in December of 1934?

72. When was he paroled from the Washington State Reformatory?

73. When did John join the Civilian Conservation Corps?

74. How old was he then?

75. Where did John join the Civilian Conservation Corps?

76. Where and how often did John visit you during his period in the Civilian Conservation Corps?

77. When did you move from Wenatchee to Blaine, Washington?

78. How often did John visit you at your home in Blaine, Washington?

79. Who did he bring along with him when he made these calls?

80. What clothing, if any, did John keep at your home in Blaine, Washington?

81. Who were the members of your household while you lived at Blaine, Washington, prior to 1942?

82. Whom did John marry?

83. Did you ever see his wife? When, where and under what circumstances?

84. What did you send John as a wedding present?

85. Did you serve as the executor of the estate of the wife of John Donley?

86. How often did you receive letters from John during the time he was in the military service?

87. How often did you write John?

88. Do you have the letters received from John during the time that he was in the military service?

89. Whom do you intend to call as witnesses in your behalf in this matter?

90. Did anyone assist you in the preparation of the answers to these interrogatories? If so, who and to what extent?

/s/ RAYMOND A. REISER,
Attorney for Defendants William E. Hoth and
Rose Hoth.

[Endorsed]: Filed June 28, 1951.

[Title of District Court and Cause.]

ANSWERS TO INTERROGATORIES

Guy F. Whitman hereby submits the following as his answers to the interrogatories propounded by the defendants William E. Hoth and Rose Hoth, the answers being numbered to correspond with the numbers of said interrogatories.

1. I believe on a farm near Bayard, Nebraska, July 28, 1914.
2. Bridgeport, Nebraska. May 2, 1917.
3. Three.
4. John about $2\frac{3}{4}$ years; Paul about 2 years younger.
5. I was a cattle rancher. I was not on salary.
6. On my ranch near Bridgeport, Nebraska.
7. Yes.
8. June, 1918.
9. I lived in town until the spring of 1919 while I worked preparing the farm we had acquired, putting down a well and building a house. The farm

was about three miles out of town. I farmed there until February, 1923; that date is the best I can remember. Then I worked in a creamery in town for one year. Then I worked mixing mortar and carrying hod for plasterers for five years. For a little while I made brooms on the side, evenings, to help pay expenses. I had no salary on the farm. At the creamery I earned \$150.00 per month. Carrying hod I started at 60c per hour, then I was raised to 80c per hour. I had some overtime until building slackened. I think my average carrying hod was about \$48.00 per week.

10. At the beginning, myself, my wife Sadie, and my two stepsons, John and Paul Donley. Later our three children, David Whitman, born March 3, 1918; Phillip, born May 5, 1919; and Ruth Whitman, born, I'm not sure, but I believe it was September 17, 1921. Something more than a year after the death of Sadie Whitman, I married Anna Whitman, October 2, 1923, and she had two children about the ages of John and Paul, or perhaps a bit older, and we all lived in the same household until the Donley boys were taken by their uncle, Will Donley. While I was a widower I had a housekeeper, a former nurse, a widow about 60 years old, take care of the house and children, and she was very good.

11. For the first nine months—West 27th Street, then on the farm, I believe it was called 33rd Street; then first Gabriel Avenue, I believe it was, then on Gideon Street. I don't remember the numbers.

12. John went one or two terms to school on the

33rd Street School, as I remember, and then the Zion School.

13. I don't remember paying any. I believe the schools were free.

14. No.

15. No. I gave it no thought.

16. September 16, 1922, as I remember.

17. October 2, 1923.

18. Anna Martineau. It was not Elinor Martin.

19. The lady I referred to before. She was called Mother Davis. I do not remember her given name.

20. About one year and a half. Anna, my wife, her two children, myself and three children, and John and Paul Donley.

21. None.

22. That is too much for me. I could not say, it was divided up among all the members of the household. We spent it all for living and we all got the same treatment.

23. No.

24. I think it was March, 1925.

25. In the winter or spring of 1925 I saw a lawyer named Theodore Forby, I believe that was his name, at Zion, about adopting John and Paul, myself. As I remember, he told me that an uncle or aunt of the blood had preference over a stepfather as to the right to have children. The next thing that happened that I know was that Will Donley appeared. He was living in or near Danville, Ill. We were at the farm and were quarantined because of scarlet fever. Altogether, for all the

children we were quarantined for 15 weeks that spring. He could not come inside. He talked through the window. As I remember I don't think he said anything then about taking the boys. He went back to Danville, and then he returned to Zion and took the boys. I think he must have seen Mr. Forby. Forby discontinued making out my adoption papers and told me that the uncle and aunt had preference, so I did not try to hold them. Will Donley did promise me that he would return them to me if he did not keep them. I hated to see them go so I asked him if he would return them to me in case that he did not keep them and he said he would.

26. Will Donley.

27. No.

28. ———.

29. ———.

30. I don't know of any such letter.

31. ———.

32. I answered this before.

33. I have already said, to Will Donley.

34. I was told that Will Donley was appointed guardian, at least that is my recollection. I did not give any thought to whether he had any court papers, because of what Mr. Forby told me. I figured that if the uncle and aunt had the preference that all I could do was to let them go. That statement in the complaint may not be exactly right. What I meant to tell my lawyer was that John was removed from my home by his uncle while I was under the belief that the uncle had the right to take him. I don't think I said exactly that he was re-

moved by a legal guardian because I don't know whether Will Donley actually got court papers. Maybe he didn't. It never occurred to me to ask him whether he did, because of what Mr. Forby had told me, that is that the uncle had the right, and I figured all I could do was to let them go.

35. I don't know if he was appointed. I have given you all the information I have on that.

36. I have already answered this.

37. I have explained this above.

38. None.

39. I don't remember whether they took any with them. I do know they had changes of clothing.

40. Nothing.

41. ———.

42. No.

43. ———

44. ———

45. Myself, my wife, my wife's two daughters and my three children.

46. No.

47. ———

48. No. I was not even told about the move.

49. ———

50. The earliest letter that I saved was one from John while he was at St. Patrick's Academy in Sydney, Nebraska. This was postmarked March 2, 1930. I believe he had written me a short time before that, and I replied to that, and this letter of March 2nd was in answer to that reply of mine. I received other letters later in that period from

John but don't believe I got any letters from Paul until after he had left the Hoth's.

51. No, the letters I saved are in the Veterans Administration file.

52. After hearing from John I wrote him from time to time, or others in the family did, I cannot say how often. Ruth, my daughter, and his half-sister wrote him. I would say that someone or other of us wrote him every two or three months until he came to live with us in 1934.

53. No.

54. ———

55. Lived in Zion until August, 1931; then moved to Wenatchee, Washington, and lived there until 1939.

56. I continued hod carrying until about 1930 when building work slumped and I got out of work and did whatever I could find. The lack of work, that was why I went to Wenatchee, thinking I might find something better. While the work kept up at Zion I got the same pay—80c per hour.

57. He wrote from school at Sydney, Nebraska, in or before 1930. I had a sister living at Sydney. I suppose he saw her. I don't have the first letter, and I don't remember what he said, but I think he may have gotten my address from her, or maybe he took a chance that I was still there at Zion and just wrote me there. Then in August, 1932, he wrote not to be surprised if "a big tramp came to the door about November." I remember that phrase in the letter. He said his job would end then. Then he did come in 1934.

58. I can't remember what he said about his reasons when he first wrote me, but after he came to Wenatchee to live with me he told me that he had had a fight with Mr. Hoth and had left and never had gone back. I don't remember what he said the quarrel was about. I did not ask him about the details. What he told me, he told me on his own accord. I don't remember his saying why he left other than that.

59. I can't remember definitely as to that date. In 1932 he wrote my daughter Ruth, his half-sister, if he could earn his clothes, he would come out to Washington with us that summer. I do know that before he came in 1934 he wrote me and I sent him \$10.00 to come out on.

60. In the summer of 1934.

61. In Wenatchee, Washington.

62. Myself and sons, David and Phillip, his half-brothers. My wife had gone back to Zion and as I was working I left my daughter, Ruth, with my brothers in the same town most of the time.

63. I was 56 then, was born in 1878.

64. Any work I could get. Fruit picking and thinning apples and cutting wood in winter.

65. I had no salary, just what wages I could make.

66. No.

67. ———

68. The summer of 1934 till he was sent to Monroe Reformatory in the winter of 1935 he contributed nothing. He picked fruit but did not have regular work and what he made was his. I fur-

nished board and lodging. After he was paroled from Monroe in August, 1935, he worked for a while and lived with me but paid nothing. He then joined the Civilian Conservation Corps in November, 1935, and was in through February, 1937. While he was with the CCC he had them send me \$25.00 per month out of the \$30.00 that he got, as I remember. After that he went into logging and did not send any more money.

69. I contributed board and lodging from about July, 1934, to February, 1935, and for two or three months beginning on August, 1935. After that he would visit off and on.

70. None.

71. In Wenatchee, Washington at Red Apple and Miller Street.

72. August, 1935.

73. Sometime in or before November, 1935.

74. Twenty-one years and about four months.

75. At Wenatchee, Washington, at least while he was staying with me there.

76. I don't believe he had any leaves for visits.

77. September, 1939.

78. Never visited in Blaine. He was in a logging camp during this time until he enlisted in the Air Corp.

79. ———

80. None.

81. I lived alone.

82. Barbara I can't now remember her maiden name.

83. No.

84. Nothing.

85. No.

86. About every month until he went overseas.

87. I replied to each of his letters.

88. No. I gave the only one I saved to the Veterans Administration.

89. I am advised by my attorney that this question is not proper or fair and should not be answered.

90. Yes, my attorney, Donald M. Bushnell. He advised me as to 89. He exhibited his file giving me dates and data concerning letters, and read the questions and took down my answers and they were copied by his stenographer.

/s/ GUY F. WHITMAN.

Subscribed and sworn to before me this 20th day of June, 1951.

[Seal] /s/ DONALD M. BUSHNELL,
Notary Public in and for the
State of Washington.

[Endorsed]: Filed June 28, 1951.

[Title of District Court and Cause.]

NOTE FOR MOTION DOCKET

To: William E. Hoth, Rose E. Hoth, David A. Whitman, Philip K. Whitman, Guy F. Whitman and Paul Donley, plaintiffs herein, and to: Raymond A. Reiser, attorney for defendants, William N. Hoth and Rose R. Hoth, his wife; and to Donald M. Bushnell, attorney for defendant, Guy F. Whitman; and

To the Clerk of the Above-Entitled Court:

You, and each of you, will hereby please take notice that defendant, Guy F. Whitman's motion that the trial of this cause be held at Bellingham, Washington, will be brought on for hearing on the 6th day of August, 1951, at the hour of 10 o'clock a.m. or as soon thereafter as counsel may be heard, the Clerk being requested to note the same accordingly on the calendar.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ KENNETH J. SELANDER,
Assistant U. S. Attorney.

Receipt of copy acknowledged.

[Endorsed]: Filed July 31, 1951.

[Title of District Court and Cause.]

WITHDRAWAL OF MOTION

Now comes Guy F. Whitman, by Donald M. Bushnell, his attorney of record, and withdraws the motion heretofore filed by him in this cause, asking that the case be transferred to the Bellingham docket for trial.

/s/ DONALD M. BUSHNELL,
Att'y for Guy F. Whitman,
Ferndale, Washington.

[Endorsed]: Filed August 3, 1951.

[Title of District Court and Cause.]

MOTION FOR DEFAULT

Comes now the plaintiff herein by and through J. Charles Dennis, United States Attorney, and Kenneth J. Selander, Assistant United States Attorney, and moves that an order of default be entered against the defendants, Philip K. Whitman, David A. Whitman, and Paul Donley.

This motion is based upon the files and records herein and the affidavit of Kenneth J. Selander attached hereto.

Dated this 15th day of November, 1951.

/s/ J. CHARLES DENNIS,
United States Attorney;
/s/ KENNETH J. SELANDER,
Assistant U. S. Attorney.

State of Washington,
County of King—ss.

Kenneth J. Selander, being first duly sworn, on oath deposes and says:

That he is Assistant United States Attorney for the Western District of Washington, as such, one of the attorneys for the plaintiff in the above-entitled action.

That the defendants herein, Philip K. Witman, David A. Whitman, and Paul Donley were duly and regularly served with process in this action by personal service as follows:

Philip K. Whitman at 30 Rockefeller Plaza, New York, New York, on March 21, 1951;

David A. Whitman at 19 W. Thomas Street, Seattle, Washington, on March 20, 1951; and

Paul Donley at 4140 17th St., San Francisco, California, on March 26, 1951.

That since said dates more than sixty days have elapsed, exclusive of the dates of service, and the said defendants, Philip K. Whitman, David A. Whitman and Paul Donley, have utterly failed to file with the Clerk of this Court or to serve upon the attorney for the plaintiff, any appearance, motion, answer, or paper of pleading whatsoever, and the time for so doing has now fully elapsed.

This affidavit is made for the purpose of taking an order of default against the defendants, Philip K. Whitman, David A. Whitman and Paul Donley.

/s/ KENNETH J. SELANDER.

Subscribed and sworn to before me this 16th day of November, 1951.

[Seal] By /s/ LOIS M. STOLSEN,
Deputy.

[Endorsed]: Filed November 16, 1951.

[Title of District Court and Cause.]

ORDER OF DEFAULT

This cause coming on regularly for hearing this day on motion of plaintiff for an order of default, and it appearing to the Court from the records and files in the action that the defendants, David A. Whitman, Philip K. Whitman and Paul Donley, were duly and regularly served with process by the delivery of a copy of the summons and complaint personally to each of said defendants as follows: Philip K. Whitman at 30 Rockefeller Plaza, New York, New York, on March 21, 1951; David A. Whitman at 19 West Thomas Street, Seattle, Washington, on March 20, 1951, and Paul Donley at 4140 17th Street, San Francisco, California, on March 26, 1951, and the defendants having failed since said date to file any appearance, motion or answer whatsoever in said cause, and the time for so doing having fully elapsed, now, therefore, it is hereby

Ordered that the defendants, David A. Whitman, Philip K. Whitman and Paul Donley, be and they hereby are, adjudged to be in default in this action.

Done in Open Court this 16th day of November, 1951.

/s/ JOHN C. BOWEN,
United States District Judge.

Presented by:

/s/ KENNETH J. SELANDER,
Assistant U. S. Attorney.

[Endorsed]: Filed November 16, 1951.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

This matter having come on regularly for hearing before the Honorable John C. Bowen, one of the Judges of the above-entitled Court on the 11th day of December, 1951, at Seattle, Washington, the plaintiff appearing and being represented by J. Charles Dennis, United States Attorney, and Kenneth J. Selander, Assistant United States Attorney, the defendants, William E. Hoth and Mrs. Rose E. Hoth, being represented by Raymond A. Reiser, their attorney, and Guy F. Whitman being represented by Donald M. Bushnell, his attorney, and no other parties appearing and the defendants having compromised their differences and having stipulated that a judgment may be entered in accordance therewith the United States of America not being a party to such stipulation and the Court having heard the arguments of counsel and

being fully advised in the premises and having rendered its decision in accordance with said stipulation, now makes the following

Findings of Fact

I.

That all times hereinafter referred to, the National Service Life Insurance Act of 1940, as amended, 38 U.S.C., Sections 445 and 817, Title 38, U.S.C. and Section 617 of the 1940 National Service Life Insurance Act and the World War Veterans Act of 1924, as amended, were in force and effect which provide for the issuance of life insurance policies to service men and veterans of the United States Military Forces and provide for the payment of benefits under said life insurance policies from the National Service Life Insurance fund, and that jurisdiction is conferred upon this Court of the persons and parties to this action under said statutory provisions.

II.

That one John M. Donley entered into active service in the United States Army on April 2, 1942, and that he died on July 12, 1943, while in the service; that while in the aforesaid service, the insured, on June 3, 1943, applied for and was granted a \$10,000.00 contract of National Service Life insurance (identified by Certificate No. N-11 661 432), in which he designated Barbara Mae Donley, described as wife, as sole beneficiary, and that the insurance contract was in full force and effect at the time of the insured's death.

III.

That by virtue of the death of the insured, John M. Donley, the insurance contract issued to him matured and insurance benefits were paid to Barbara Mae Donley, widow and designated sole beneficiary, in monthly instalments of \$55.10 from July 12, 1943, through January 11, 1946, totalling the sum of \$1,653.00; that the designated sole beneficiary, Barbara Mae Donley, died on December 25, 1945; that while the plaintiff stands ready and willing to pay the balance due under the policy to the person or persons lawfully entitled thereto, a dispute arose as to the person or persons entitled to receive such payments; that the plaintiff, United States of America, disclaimed any interest in said funds except to have the same paid to the person or persons found by the Court to be legally entitled thereto.

IV.

That all of the above-named defendants, namely, William E. Hoth, Mrs. Rose E. Hoth, David A. Whitman, Philip K. Whitman, Guy F. Whitman, and Paul Donley filed claims with the Veterans Administration alleging entitlement to the benefits of the aforesaid insurance.

V.

That notice of the intention to institute this action was given to each of the defendants except Paul Donley by letters dated September 7, 1950, and that as to the said Paul Donley, notice was given by letter dated December 15, 1950, from the Veterans Administration; that said notices were

given pursuant to Section 19 of the World War Veterans Act of 1924, as amended (Section 445, Title 38, U.S.C.A., incorporated by reference in Section 817 of said title).

VI.

That all of the above-named defendants, namely, William E. Hoth, Mrs. Rose E. Hoth, David A. Whitman, Philip K. Whitman, Guy F. Whitman, and Paul Donley, were duly and regularly served with a summons issued by the Clerk of this Court; that appearances have been filed herein on behalf of the defendants, William E. Hoth, Rose E. Hoth, and Guy F. Whitman, only; that an order of default has hereinbefore been entered against David A. Whitman, Philip K. Whitman and Paul Donley under order of this Court dated November 16, 1951.

VII.

That the Court finds from the evidence and the records before it that Guy F. Whitman, William E. Hoth and Rose E. Hoth, all last stood in the position of loco parentis for a period exceeding one year prior to his death and were standing in that relationship to the deceased, John M. Donley, at the time of his death and are entitled to the remaining proceeds of the insurance contract of said deceased which is identified by Certificate No. N 11,661,432.

VIII.

The Court further finds that the defendants, David A. Whitman, Philip K. Whitman and Paul Donley, or any person other than the above-named

parties in loco parentis to the deceased, are not entitled to any interest and proceeds of the insurance of John M. Donley.

IX.

That in accordance with the terms of the said National Service Life Insurance Act of 1940, as amended, and the regulations of the administrator authorized thereby, in accordance with the said policy of life insurance identified by Certificate No. N-11,661,432, the defendant William E. Hoth, as one of the persons who last stood in the position of loco parentis to the deceased, is entitled to the payment of the sum of \$3,857.70 by the United States of America on account of said policy, less an allowance to his attorney, Raymond A. Reiser, of a reasonable sum for his services in this action in the amount of 10% of said sum of \$385.77.

X.

That in accordance with the terms of the said National Service Life Insurance Act of 1940, as amended, and the regulations of the administrator authorized thereby, in accordance with the said policy of life insurance identified by Certificate No. N-11,661,432, the defendant, Mrs. Rose E. Hoth, as one of the persons who last stood in the position of loco parentis to the deceased, is entitled to the payment of the sum of \$3,857.70 by the United States of America on account of said policy, less an allowance to her attorney, Raymond A. Reiser, of a reasonable sum for his services in this action in the amount of 10% of said sum or \$385.77.

XI.

That in accordance with the terms of the said National Service Life Insurance Act of 1940, as amended, and the regulations of the administrator authorized thereby, and in accordance with the said policy of life insurance identified by Certificate No. N-11,661,432, the defendant, Guy F. Whitman, as one of the persons who last stood in the position of loco parentis to the deceased, is entitled to the payment of the sum of \$3,855.60 by the United States of America on account of said policy, less an allowance to his attorney, Donald M. Bushnell, of a reasonable sum for his services in this action in the amount of 10% of said sum or \$385.56.

Done in Open Court this 11th day of December, 1951.

/s/ JOHN C. BOWEN,

United States District Judge.

And from the foregoing Findings of Fact, the Court now makes the following Conclusions of Law:

I.

That William E. Hoth, as one of the persons who last stood in the position of loco parentis to the deceased, John M. Donley, is entitled to have and recover of and from the United States of America under the National Service Life Insurance policy identified as Certificate No. N-11,661,432, the sum of \$3,857.70, of which the sum of \$1,322.64 shall be paid to said defendant upon the entry of judgment and of which sum of \$3,857.70 the sum of \$18.37 shall be paid to said defendant on the 12th day of

January, 1952, and on the 12th day of each succeeding month until the balance of the judgment has been paid, less ten per cent (10%) of the said \$3,857.70 to be paid to his attorney as hereinafter set forth.

II.

That Mrs. Rose E. Hoth, as one of the persons who last stood in the position of loco parentis to the deceased John M. Donley, is entitled to have and recover of and from the United States of America under the National Service Life Insurance policy identified as Certificate No. N-11,661,432, the sum of \$3,857.70, of which the sum of \$1,322.64 shall be paid to said defendant upon the entry of judgment and of which sum of \$3,857.70 the sum of \$18.37 shall be paid to said defendant on the 12th day of January, 1952, and on the 12th day of each succeeding month until the balance of the judgment has been paid, less ten per cent (10%) of the said \$3,857.70 to be paid to her attorney as hereinafter set forth.

III.

That Guy F. Whitman, as one of the persons who last stood in the position of loco parentis to the deceased, John M. Donley, is entitled to have and recover of and from the United States of America under the National Service Life Insurance policy identified as Certificate No. N-11,661,432, the sum of \$3,855.60, of which the sum of \$1,321.92 shall be paid to said defendant upon the entry of judgment and of which sum of \$3,855.60 the sum of \$18.36 shall be paid to said defendant on the 12th day of January, 1952, and on the 12th day of each suc-

ceeding month until the balance of the judgment has been paid, less ten per cent (10%) of the said \$3,855.60 to be paid to his attorney as hereinafter set forth.

IV.

That Raymond A. Reiser is entitled, as attorney for the defendant, William E. Hoth, to have and recover from the plaintiff, United States of America, for his attorney's fees herein, 10% of the said sum of \$3,857.70 or the sum of \$385.77 of which the sum of \$132.26 shall be paid upon entry of judgment, and a further sum of \$1.84 shall be paid upon the 12th day of January, 1952, and on the 12th day of each succeeding month until the balance of the judgment has been paid.

V.

That Raymond A. Reiser is entitled, as attorney for the defendant, Mrs. Rose E. Hoth, to have and recover from the plaintiff, United States of America, for his attorney's fees herein, 10% of the said sum of \$3,857.70 or the sum of \$385.77 of which the sum of \$132.26 shall be paid upon entry of judgment, and a further sum of \$1.84 shall be paid upon the 12th day of January, 1952, and on the 12th day of each succeeding month until the balance of the judgment has been paid.

VI.

That Donald M. Bushnell, is entitled as attorney for the defendant, Guy F. Whitman, to have and recover from the plaintiff, United States of America, for his attorney's fees herein, 10% of the said

sum of \$3,855.60 or the sum of \$385.56 of which the sum of \$132.19 shall be paid upon entry of judgment, and a further sum of \$1.83 shall be paid upon the 12th day of January, 1952, and on the 12th day of each succeeding month until the balance of the judgment has been paid.

VII.

That the above attorneys' fees are to be deducted from the proceeds of the National Service Life Insurance policy and the Administrator of Veterans Affairs should be directed to make such payments of attorneys' fees to said attorneys.

Done in Open Court this 11th day of December, 1951.

/s/ JOHN C. BOWEN,
United States District Judge.

Presented by:

/s/ KENNETH J. SELANDER,
Assistant U. S. Attorney.

Approved as to form:

/s/ RAYMOND A. REISER,
Attorney for Defendants, William E. Hoth and
Mrs. Rose E. Hoth.

/s/ DONALD M. BUSHNELL,
Attorney for Defendant,
Guy F. Whitman.

[Endorsed]: Filed December 11, 1951.

United States District Court, Western District of
Washington, Northern Division

No. 2735

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM E. HOTH, MRS. ROSE E. HOTH,
DAVID A. WHITMAN, PHILIP K. WHIT-
MAN, GUY F. WHITMAN, and PAUL
DONLEY,

Defendants.

JUDGMENT

This matter having come on regularly for hearing before the Honorable John C. Bowen, one of the Judges in the above-entitled court, on the 11th day of December, 1951, at Seattle, Washington, the plaintiff appearing and being represented by J. Charles Dennis, United States Attorney, and Kenneth J. Selander, Assistant United States Attorney, the defendants, William E. Hoth and Mrs. Rose E. Hoth, being represented by Raymond A. Reiser, their attorney, and Guy F. Whitman being represented by Donald M. Bushnell, his attorney, and no other parties appearing, and the defendants having compromised their differences and having stipulated that a judgment may be entered in accordance therewith, the United States of America not being a party to such stipulation, the court having heard the arguments of counsel, examined the files and records herein, and having heretofore

entered its Findings of Fact and Conclusions of Law in accordance with the aforementioned stipulation, and it appearing that the defendants William E. Hoth and Mrs. Rose E. Hoth, his wife, and Guy F. Whitman last stood in loco parentis to the deceased at the time of his death and for more than one year prior thereto, are the persons entitled to receive the balance of proceeds due under the insurance policy constituting the subject matter of this action, and the court being fully advised in the premises, now, therefore, it is hereby

Ordered, Adjudged and Decreed that the United States of America pay to William E. Hoth as one of the three persons who last stood in loco parentis to the deceased, the sum of \$3,857.70 of which sum \$1,322.64 shall be paid to the said William E. Hoth upon the entry of this judgment and the balance to be paid at the rate of \$18.37 per month on the 12th day of January, 1952, and on the 12th day of each and every month thereafter until the balance of said judgment shall be paid.

It is further Ordered, Adjudged and Decreed that the United States of America pay to Mrs. Rose E. Hoth as one of the three persons who last stood in loco parentis to the deceased, the sum of \$3,857.70 of which sum \$1,322.64 shall be paid to the said Mrs. Rose E. Hoth upon the entry of this judgment and the balance to be paid at the rate of \$18.37 per month on the 12th day of January, 1952, and on the 12th day of each and every month thereafter until the balance of said judgment shall be paid.

It is further Ordered, Adjudged and Decreed that the United States of America pay to Guy F. Whitman as one of the three persons who last stood in loco parentis to the deceased, the sum of \$3,855.60 of which sum \$1,321.92 shall be paid to the said Guy F. Whitman upon the entry of this judgment and the balance to be paid at the rate of \$18.36 per month on the 12th day of January, 1952, and on the 12th day of each and every month thereafter until the balance of said judgment shall be paid.

It is further Ordered, Adjudged and Decreed that Donald M. Bushnell, as attorney for the defendant Guy F. Whitman, is entitled to have and recover from the plaintiff, United States of America, for his attorney's fees herein, 10% of the said sum of \$3,855.60 or the sum of \$385.56 of which the sum of \$132.19 shall be paid upon entry of judgment, and a further sum of \$1.83 shall be paid upon the 12th day of January, 1952, and on the 12th day of each succeeding month until the balance of the judgment has been paid. Said attorney's fees to be deducted from the proceeds of the National Service Life Insurance policy and the Administrator of Veterans Affairs is directed to make such payments of attorneys' fees to said attorneys.

It is further Ordered, Adjudged and Decreed that Raymond A. Reiser is entitled, as attorney for the defendant William E. Hoth, to have and recover from the plaintiff, United States of America, for his attorney's fees herein, 10% of the said sum of \$3,857.70 or the sum of \$385.77 of which the sum of

\$132.26 shall be paid upon entry of judgment, and a further sum of \$1.84 shall be paid upon the 12th day of January, 1952, and on the 12th day of each succeeding month until the balance of the judgment has been paid. Said attorney's fees to be deducted from the proceeds of the National Service Life Insurance policy and the Administrator of Veterans Affairs is directed to make such payments of attorney's fees to said attorney.

It is further Ordered, Adjudged and Decreed that Raymond A. Reiser is entitled, as attorney for the defendant, Mrs. Rose E. Hoth, to have and recover from the plaintiff, United States of America, for his attorney's fees herein, 10% of the said sum of \$3,857.70 or the sum of \$385.77 of which sum of \$132.26 shall be paid upon entry of judgment, and a further sum of \$1.84 shall be paid upon the 12th day of January, 1952, and on the 12th day of each succeeding month until the balance of the judgment has been paid. Said attorney's fees to be deducted from the proceeds of the National Service Life Insurance policy and the Administrator of Veterans Affairs is directed to make such payments of attorney's fees to said attorney.

Done in Open Court this 11th day of December, 1951.

/s/ JOHN C. BOWEN,

United States District Judge.

Presented by:

/s/ KENNETH J. SELANDER,

Assistant U. S. Attorney.

Approved as to form:

/s/ RAYMOND A. REISER,

Attorney for Defendants, William E. Hoth and
Mrs. Rose E. Hoth, His Wife.

/s/ DONALD M. BUSHNELL,

Attorney for Defendant,
Guy F. Whitman.

[Endorsed]: Filed December 11, 1951.

[Title of District Court and Cause.]

STIPULATION OF COMPROMISE
AND SETTLEMENT

Comes Now the plaintiff, United States of America, by its attorney,; William E. Hoth and Rose E. Hoth, defendants herein, by their attorney, Raymond A. Reiser and Guy F. Whitman, defendant herein, by his attorney, Donald M. Bushnell and stipulate, in compromise and settlement as follows:

Whereas no appearance has been entered by any party to the above-entitled action other than the above-named defendants and an order of default has been or will be entered herein prior to entry of judgment;

Whereas the above-named defendants are aged and distant from the place of trial;

Whereas each of the above-named defendants believe that there is merit to the claim of the other

to the proceeds of insurance in question herein and that each stood in the relation of loco parentis to the deceased for more than one year prior to his demise;

Whereas the plaintiff disclaims any interest in the remaining balance of the proceeds of a contract of National Service Life Insurance (identified by Certificate No. N-11 661 432) and stands ready and willing to pay any and all further sums of money due under said policy to the person or persons lawfully entitled thereto;

Whereas the only remaining claimants herein have resolved their differences and are ready, willing and able to compromise and settle the same, and in accordance with the policy of the law to encourage compromise and settlements.

Now, Therefore, It Is Stipulated and Agreed as Follows:

1. That at the time of the death of John M. Donley, insured, and for a period of more than one year prior to his death, Guy F. Whitman, step-father; William E. Hoth, uncle, and Rose E. Hoth, aunt, all last stood in the relation of loco parentis to the deceased and are equally entitled to share the remaining proceeds of National Service Life Insurance issued by the United States of America to the deceased.

2. That in the event of any of the above-named parties die prior to the time the entire proceeds of said insurance have been fully paid, then, and in

that event, the remaining sum shall be paid to the survivor or survivors, share and share alike.

3. That the findings of fact and conclusions of law hereto attached are approved as to form and incorporated herein by reference as though more fully set forth herein.

4. That 1/10th of the proceeds of insurance awarded to each of the above-named claimants is a reasonable sum to be awarded his or her attorney as attorney's fees herein.

Nov. 8, 1951.

/s/ RAYMOND A. REISER,
Attorney for William E. Hoth
and Rose E. Hoth.

Nov. 27, 1951.

/s/ DONALD M. BUSHNELL,
Attorney for Guy F.
Whitman.

It Is So Ordered This .. day of, 19...

.....,
Judge.

[Endorsed]: Filed December 11, 1951.

United States
Department of Justice
Washington 25, D. C.

(Copy)

AHB:PCC:mem

146-55-1125

Oct. 5, 1951.

Registered

J. Charles Dennis, Esquire,
United States Attorney,
Seattle 4, Washington.

Re: United States vs. William E. Hoth,
et al. Civil No. 2735.

(Donley, John M.—XC-3 279 030)

Dear Mr. Dennis:

This has reference to your letter of September 17, 1951, forwarding the Veterans Administration file and advising that the parties to the suit desired to settle the matter by dividing the unpaid benefits among three of the six defendants. In this connection, it is presumed that William E. Hoth, Rose E. Hoth and Guy F. Whitman are the claimants to receive the benefits under this agreement. In support thereof Raymond A. Reiser, attorney for William E. Hoth, cites the case of Hennings vs. United States, 93 Fed. Supp. 380.

Our file indicates that following the death of Barbara Mae Donley, the insured's wife and sole designated beneficiary, claims for the remaining installments were filed by the six defendants to this action. Since no contingent beneficiary was named,

the remaining installments of the insurance became payable under the laws relating to devolution. The devolution Section of the Act (802 (h) (3) of Title 38 U.S.C.A.) provides that where an insured veteran is not survived by a widow, child or children the insurance should be paid to the parent or parents "who last bore that relationship" in equal shares. It is further provided that if the insured was not survived by parent or parents, the next preferred persons are the brothers and sisters of the insured.

In the instant case the file indicates that the insured was not survived by a child or children or a natural parent. His wife survived him, but died shortly thereafter. Therefore, the question as to the person or persons entitled to the unpaid benefits depends upon who or whom in fact stood in loco parentis to the insured for the period of time required by the Act. This is a question which must be determined by the Court upon the basis of evidence adduced before the Court and not left to the parties to decide, as is proposed by the attorney for William E. Hoth. Of course, the full and half brothers of the insured would not be entitled to the proceeds if any one or more of the claimants established that they were in loco parentis to the insured.

In addition to the foregoing, the case may not properly be disposed of upon the basis of an assignment under Section 816 of Title 38 U.S.C.A., the only method authorized by law for settling of disputes to the proceeds of policies of National Service Life Insurance. Consequently, it will be necessary that the case proceed to trial upon the issue of fact

as to whether any one or more of the claimants stood in the relationship of a parent to the insured within the meaning of the National Service Life Insurance Act. Of course, if the Court finds in favor of one and to the exclusion of the other claimants, the Government will not concern itself with any private agreements which they may enter into with respect to a division of the proceeds of the insurance if and when they are paid by the Veterans Administration pursuant to the judgment to be entered by the Court.

Accordingly, it will be seen that the case of *Hennings vs. United States*, *supra*, is not authority for the method of settlement desired by the parties since the Court is required, on the basis of evidence presented at the trial, to determine whether a party or parties stood in loco parentis to the insured as provided by the Act.

We have not been furnished with a copy of the defendants' answers and if such have been filed, it is requested that you forward copies for our files. The Veterans Administration file is being returned for your use in the trial of this action.

Sincerely yours,

For the Attorney General,

/s/ HOLMES BALDRIDGE,

Assistant Attorney General.

[Endorsed]: Filed December 14, 1951.

Office of
Solicitor.

June 23, 1950.

XC-3 279 030

Donley, John M.

Honorable Henry M. Jackson, M.C.,
House of Representatives,
Room 1428, House Office Building,
Washington, D. C.

Dear Mr. Jackson:

Your letter of June 13th, enclosing letter from Mr. Donald M. Bushnell, attorney at law, Ferndale, Washington, has been duly received and the questions presented thereby considered.

It is noted that Mr. Bushnell states that Mr. Whitman is willing to settle the question of entitlement to remaining unpaid installments of the insurance on the life of the above-named serviceman by an equal division thereof with Mr. William E. Hoth and his wife, Mrs. Rose Hoth, apparently so as to obviate the necessity for legal proceedings and the delay incident thereto.

Section 616 of the National Service Life Insurance Act of 1940, as amended (S. 816, Title 38, U.S.C.A.) reads as follows so far as is pertinent:

“* * * Provided, That assignments of all or any part of the beneficiary's interest may be made by a designated beneficiary to a widow, widower, child, father, mother, grandfather, grandmother, brother, or sister of the insured, when the designated contingent beneficiary, if

any, joins the beneficiary in the assignment, and if the assignment is delivered to the Veterans' Administration before any payments of the insurance shall have been made to the beneficiary: Provided further, That an interest in an annuity, when assigned, shall be payable in equal monthly installments in such multiple of twelve as most nearly equals the number of installments certain under such annuity, or in two hundred and forty installments, whichever is the lesser." (Emphasis added.)

The sole designated beneficiary of the insurance in question was Barbara Mae Donley, wife of the insured, who is reported to have died on December 25, 1945. No contingent beneficiary was named by the insured, and therefore, an assignment such as contemplated by the above-quoted provision of the statute cannot be made in this case. Another reason it cannot is that numerous payments have already been made to the designated beneficiary. On the other hand it appears that the right to the remaining unpaid installments is determinable by application of the provisions of subsection 602 (h) (3) of the Act, as amended. Since the insured left surviving him no children and his widow has since died, and since the insured's natural parents are both dead, the contest here involved is one between persons who claim to have last occupied the relationship of "parent" to the insured within the contemplation of subsection 602 (h) (3) (C) and Section 601 (f) of the Act.

The Veterans Administration has heretofore taken the position, in Administrator's Decision No. 792, August 30, 1948, that the legal status of "in loco parentis," which is by Section 601 (f) of the Act included within the definition of the term "parent," can embrace at most only one father and one mother at the same time, and therefore it would be placed in the anomalous position of recognizing the existence of two persons occupying the position of the father to the insured contemporaneously if it now gave its approval to a division of the proceeds of the insurance in question. Not only that, but its authority to do so is highly questionable, in view of the above-quoted provisions of the Act.

For the foregoing reasons it is believed that the most feasible solution under the circumstances is to allow the entitlement of the parties to be determined by the courts. It may be added that this course appears to be desirable for the additional reason that the insured left at least one brother and one or more half-brothers who may assert a claim to such insurance as against both Mr. and Mrs. Hoth and Mr. Whitman. As a matter of fact one of the brothers has heretofore filed formal claim for the insurance with the Veterans Administration. It is, of course, entirely possible that if the matter is placed before the courts, all other claimants having a possible interest may file disclaimers and permit the entry of a judgment by stipulation in favor of Mr. Whitman, as the person who last bore the relationship of a father to the insured, and Mrs.

Hoth as the person who last bore the relationship of a mother to the insured.

It is believed that the above answers the inquiries made by Mr. Bushnell, but in the event that you desire additional information we shall be glad to communicate with you further.

Very truly yours,

EDWARD E. ODOM,
Solicitor.

DCB/wab

[Endorsed]: Filed December 14, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL

To: William E. Hoth and Rose E. Hoth, plaintiffs,
and to Raymond A. Reiser, their attorney; and
to Guy F. Whitman, plaintiff, and to Donald M.
Bushnell, his attorney:

Notice is hereby given that the United States of America, plaintiff above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the Judgment entered in the above court on the 11th day of December, 1951.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ KENNETH J. SELANDER,
Assistant United States
Attorney.

[Endorsed]: Filed February 5, 1952.

DEFENDANTS' EXHIBIT A-1

United States District Court, Western District
of Washington, Northern Division

Civil Action No. 2735

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILLIAM E. HOTH, et al.,

Defendants.

STIPULATION OF COMPROMISE
AND SETTLEMENT

Comes Now the plaintiff, United States of America, by its attorney,; William E. Hoth and Rose E. Hoth, defendants herein, by their attorney Raymond A. Reiser, and Guy F. Whitman, defendant herein, by his attorney, Donald M. Bushnell and stipulate, in compromise and settlement as follows:

Whereas no appearance has been entered by any party to the above-entitled action other than the above-named defendants and an order of default has been or will be entered herein prior to entry of judgment;

Whereas the above-named defendants are aged and distant from the place of trial;

Whereas each of the above-named defendants believe that there is merit to the claim of the other to the proceeds of insurance in question herein and that each stood in the relation of loco parentis to

the deceased for more than one year prior to his demise;

Whereas the plaintiff disclaims any interest in the remaining balance of the proceeds of a contract of National Service Life Insurance (identified by Certificate No. N-11 661 432) and stands ready and willing to pay any and all further sums of money due under said policy to the person or persons lawfully entitled thereto;

Whereas the only remaining claimants herein have resolved their differences and are ready, willing and able to compromise and settle the same under the provisions of Title 38, Section 445, (b), U.S.C.A., and in accordance with the policy of the law to encourage compromise and settlements.

Now, Therefore, It Is Stipulated and Agreed as Follows:

1. That at the time of the death of John M. Donley, insured, and for a period of more than one year prior to his death, Guy F. Whitman, stepfather; William E. Hoth, uncle, and Rose E. Hoth, aunt, all last stood in the relation of loco parentis to the deceased and are equally entitled to share the remaining proceeds of National Service Life Insurance issued by the United States of America to the deceased.

2. That in the event any of the above-named parties die prior to the time the entire proceeds of said insurance have been fully paid, then, and in that event, the remaining sum shall be paid to the survivor or survivors, share and share alike.

3. That the findings of fact and conclusions of law hereto attached are approved as to form and incorporated herein by reference as though more fully set forth herein.

4. That 1/10th of the proceeds of insurance awarded to each of the above-named claimants is a reasonable sum to be awarded his or her attorney as attorney's fees herein.

.....,
RAYMOND A. REISER,
Attorney for William E. Hoth
and Rose E. Hoth.

.....,
DONALD M. BUSHNELL,
Attorney for Guy F.
Whitman.

.....,
Attorney for the United
States, Plaintiff.

It Is So Ordered This .. day of 19...

.....,
Judge.

I, Rose E. Hoth, defendant and claimant herein, do hereby consent to the entry into the stipulation on the reverse side hereof by my attorney, Raymond A. Reiser, and to hereby ratify and confirm his act, this 19th day of November, 1951.

/s/ MRS. ROSE HOTH,
Defendant.

Greeley, Colo.
Aug. 20th, 1951,

Mr. Raymond A. Reiser,

Dear Sir:

I have just recd. the inclosed letter from Mr. Whitman.

I feel it up to you as to what to do about it. You have all the facts and should know more about it than I do.

Maybe this letter is the truth, maybe not, you should know.

Pleas let me know how things are coming.

Yours Respt.,

/s/ W. E. HOTH,
715-5th St.,
Greeley, Colo.

Greeley, Colo.
Aug. 25, 1951,

Mr. Reiser,

Dear Sir:

I have your letter of the 22nd.

What does a 3-way split amount to in dollars and cents and to whome? Pleas state fully.

As to your other question, I raised 4 other boys besides John. There were times I had to kick the seat of their pants to get them to understand what was right and what was wrong. They all grew up to be honorable men. Thar wer no fights. I shure have been ast some of D.s fool qustins. About as bade as Joy and Ridgway over in Korea. Am getting no place. It has been 8 years since John was killed. No settlement. If this goes to trial I well there.

/s/ W. E. HOTH.

Mr Raymond A Keiser

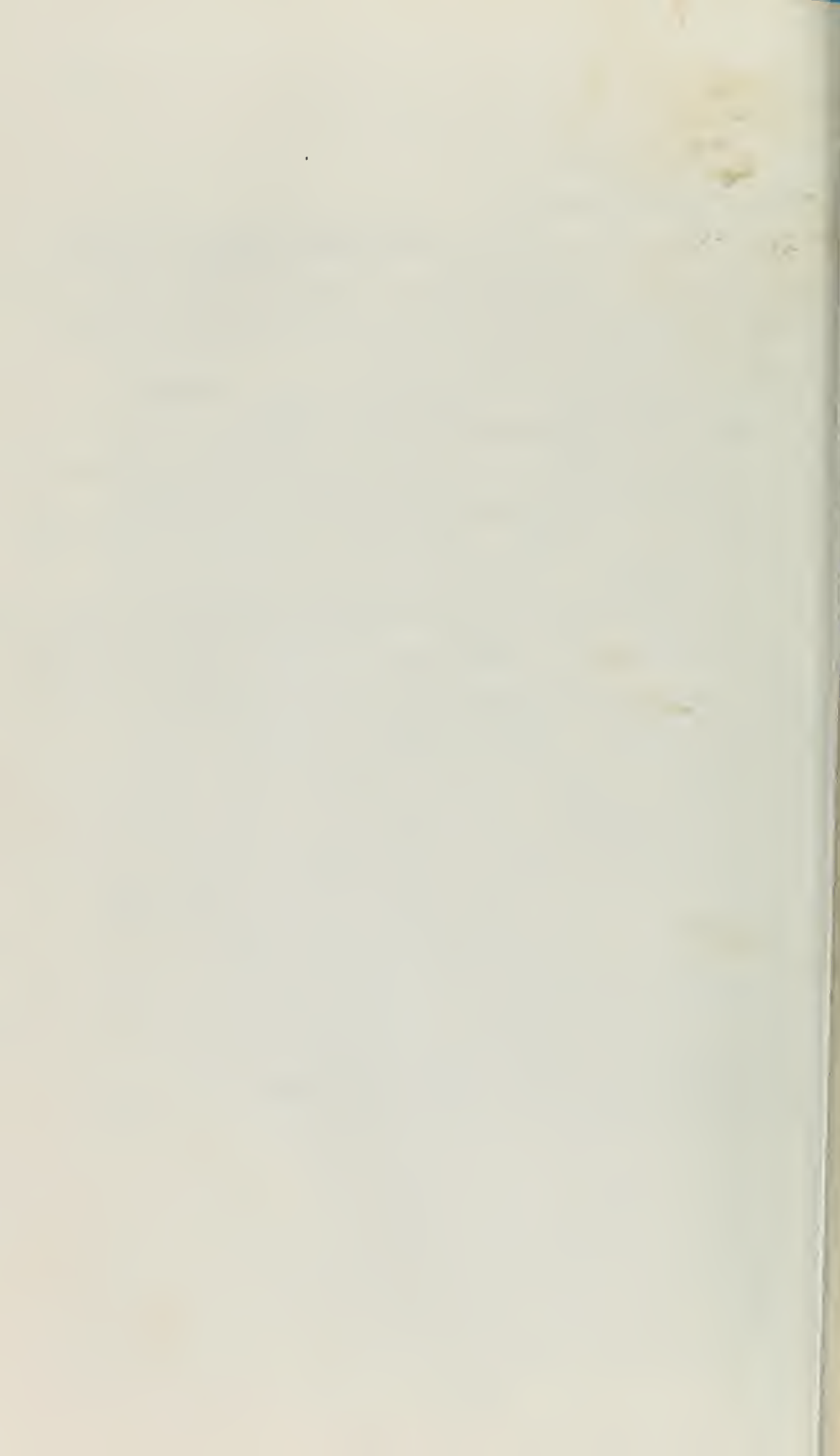
Dear Sir in regard to the John M. Donly estate or insurance i hardly know how to answer as i have tried so many times to explain and none of them seem to be what you need

A Mrs Ruby Prent. Wheatland wyo Route

Mrs. Mary Gorwood Dwyer wyo

B. No Guy Whitman nor none of the family wrote or sent cards or no presents didn't show any interest as if they had ever known the boys were alive

C. yes John & struck Mr. Hoth he had showed him how to put wood in the saw so he would not brake the saw as they were sawing wood for the house Mr Hoth didn't strike him to my knowing it did cut Mr. Hoths life till he had to have the Dr sew it Mr Hoth said then i should have something done with him and then after thinking it over he said no i will not do it and as Mr Hoth was gone just a bit at the time it was hard for it was at the place where we seldom ask any thing of him for he would brake or destroy whatever he worked with and would throw clubs or any thing at his Bros & i feared to have them out together doing chores and i think it was & not Mr. Hoth that told him that as long as he

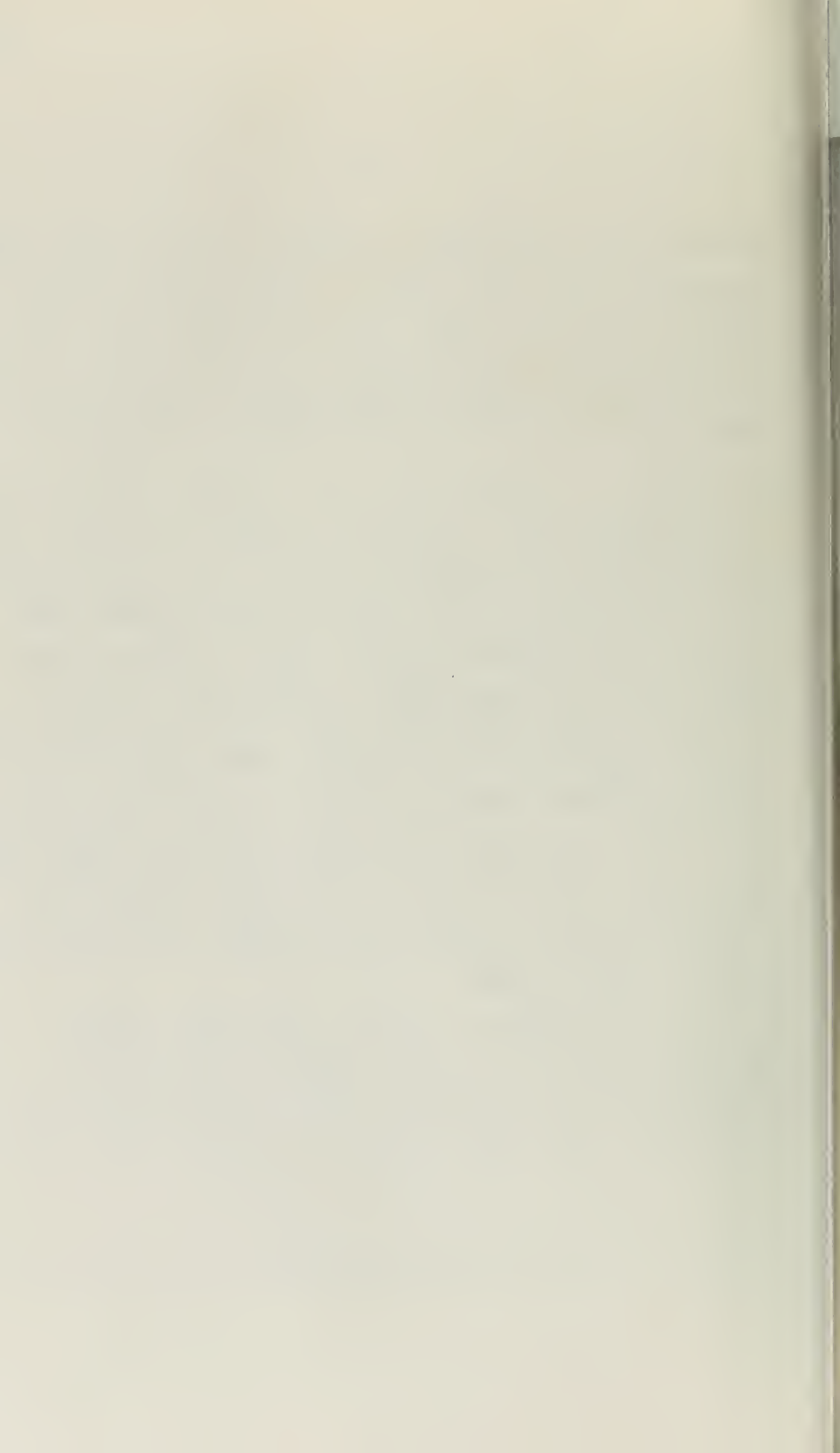


82

did not want to help & get along i was not able to support & do for him and to try to find a steady job he went to cosper in a few days & went out with a sheepman & i had a cord from him they were trailing sheep to Biggs Colo & later to vernal utah had several cords & letters through the summer

D. as long as both boys were with me they both roomed together but when john was home last Paul had finished school & was in CCC camp about 17 mi came home over Sunday most of the time i was alone most of the time so there was a seperate room for john at that time be he seemed to feel he shouldnt do any thing for anyone after he had staid till didnt have even tobacco money Paul gave him money & i got him every day goes to go back to Brazz Colo on a job he said he had but couldnt get to it i heard from him a cord there then when i had another cord he was with a truck driver way in the south.

E. i do not think i have any thing left
 F. No Will Donley or his wife is not living
 Their Daughter was a teacher at the time the boys were in the home Wm. Blair Ingalsbe. Donville Ill. W W 3



3

is her address and as there were the two grown girls in the home they can tell you the condition of the boys & their clothing when their father brought them to their home

~~S. W. I~~ Sutherland is Sheriff of Platt Co

G. No i have no income to tax

H. all but the first year ^{school} they were with me I had moved to town to keep my daughters in high school in winter but decided it would be better for the boys & for me on the ranch and boarded the daughters in town.

well i think i have explained this as fully as i can & i hope it will be satisfactory i will also send you whitmans letter to me how he can say John & Paul were with him i dont know for he moved into the home that had been provided for them and they had plenty to keep them and he and their mother started the whitman family in their home i cant see where he has any claim for any thing but it seems there is isent much but trouble in this would any way i will try and answer any other questions i can & hope it can be settled

Resp Mrs Rose Hoth

B83. Wheatland Wyo

ADMITTED IN EVIDENCE - DECEMBER 11, 1951



DEFENDANTS' EXHIBIT A-2

[Exhibit A-2 consists of a Stipulation identical in form with the Stipulation in Exhibit A-1 set forth at page 65 with the following consent endorsed thereon.]

I, William E. Hoth, defendant and claimant herein, having read the stipulation on the reverse side hereof due hereby ratify and confirm the act of my attorney in entering the same in this action. Dated this 27th day of November, 1951, at Greeley, Colo.

/s/ WILLIAM E. HOTH,
Defendant.

Greeley, Colo.
Aug. 27, 1951.

Mr. Reiser, Dear Sir:

Pleas find inclosed another one from Whitman. I don't understand the division of 4,000 3 ways and him get the balance. I think the division of the full amount of insurance now due looks fair, $\frac{1}{3}$ to Whitman, $\frac{1}{3}$ to Mrs. Hoth and $\frac{1}{3}$ to me. I think we would be willing to settle on that basis.

/s/ W. E. HOTH.

P.S. I am not writing to Whitman. That up to you.

Admitted December 11, 1951.

DEFENDANTS' EXHIBIT A-3

[Exhibit A-3 consists of a Stipulation identical in form with the Stipulation in Exhibit A-1 set forth at page 65 with the following consent endorsed thereon.]

I, Guy F. Whitman, defendant and claimant herein, having read the stipulation on the reverse side hereof, do hereby consent thereto and ratify and approve the entry thereof by my attorney Donald M. Bushnell this 27th day of November, 1951.

/s/ GUY F. WHITMAN,
Defendant.

Admitted December 11, 1951.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO RECORD ON APPEAL

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 11 as Amended of the United States Court of Appeals for the Ninth Circuit, and Rule 75 (o) of the Federal Rules of Civil Procedure and I am transmitting herewith all of the original papers in the file dealing with the

above-entitled action, and that the same constitute the complete record on file in said cause and the record on appeal from the Judgment entered in said cause on December 12, 1951, and filed on December 11, 1951, to the United States Court of Appeals at San Francisco, California, said documents being identified as follows:

1. Complaint in the Nature of a Bill of Interpleader, filed March 8, 1951.

2. Praecipe for Summons, filed March 8, 1951.

3. Order for Issuance of Summons, filed March 12, 1951.

4. Marshal's return on Summons, filed March 14, 1951. (Unserved.)

5. Marshal's return on Summons (Mrs. Rose E. Hoth), filed March 19, 1951.

6. Marshal's return on Summons (Guy E. Whitman), filed March 27, 1951.

7. Copy of Summons as issued under order of March 12, 1951, filed 3-27-51.

8. Marshal's return on Summons (Philip K. Whitman), filed 3-27-51.

9. Marshal's return on Summons (David A. Whitman), filed 3-28-51.

10. Marshal's return on Summons (Paul Donley), filed 3-30-51.

11. Marshal's return on Summons (William E. Hoth), filed 3-30-51.

12. Appearance of Raymond A. Reiser for defts. William N. and Rose R. Hoth, filed 5-8-51.

13. Appearance of Donald M. Bushnell for Guy F. Whitman, filed 5-15-51.

14. Answer to Interpleader and Statement of Claim by Guy F. Whitman, filed 5-15-51.

15. Answer to Bill of Interpleader and Statement of Claim by Rose E. and William E. Hoth, filed 6-1-51.

16. Affidavit of William E. Hoth, et ux, in Resistance to Motion for Change of Situs of Trial, filed 6-12-51.

17. Motion of Guy F. Whitman to hold trial in Bellingham, filed 6-12-51.

18. Interrogatories of Rose Hoth, and William E. Hoth to Guy F. Whitman, filed 6-28-51.

19. Answers of Guy F. Whitman to interrogatories of William E. Hoth and Rose Hoth, filed 6-28-51.

20. Note for Motion docket, filed 7-31-51, re Motion to hold trial at Bellingham.

21. Withdrawal of Motion of Guy F. Whitman to hold trial at Bellingham, filed 8-3-51.

22. Motion of Plaintiff for default against defendants Philip K. Whitman, David A. Whitman and Paul Donley, filed 11-16-51.

23. Order of Default, filed 11-16-51.

24. Findings of Fact and Conclusions of Law, filed 12-11-51.

25. Judgment, filed Dec. 11, 1951, and entered in civil docket 12-12-51.

26. Stipulation of Compromise and Settlement filed 12-11-51.

27. Copy of letter dated 10-5-51 from Attorney General to U. S. Attorney, filed 12-14-51.

28. Copy of letter dated 6-23-50 from Edward

E. Odom, solicitor to Hon. Henry M. Jackson, M. C.,
filed 12-14-51.

29. Notice of Appeal, filed Feb. 5, 1952.
Defendants' Exhibits A-1, A-2 and A-3.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office for preparation of the record on appeal herein on behalf of plaintiff, to wit: Notice of Appeal, \$5.00, and that this amount has not been paid to me by attorneys for appellant for the reason that the appeal herein is being prosecuted by the United States of America.

In Witness Whereof I have hereunto set my hand and affixed the official seal of said District Court at Seattle, this 12th day of March, 1952.

[Seal] MILLARD P. THOMAS,
 Clerk;
By /s/ TRUMAN EGGER,
 Chief Deputy.

[Endorsed]: No. 13294. United States Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. William E. Hoth, Rose E. Hoth and Guy F. Whitman, Appellees. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed March 14, 1952.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit
No. 13294

UNITED STATES OF AMERICA,
Appellant,

vs.

WILLIAM E. HOTH, ROSE E. HOTH and GUY
F. WHITMAN,
Appellees.

POINTS TO BE RELIED UPON ON APPEAL

Comes now the appellant, United States of America, and states that the following points will be relied upon on appeal in the above-entitled cause:

1. That the Court erred in finding, since there was no evidence before it, that Rose E. Hoth ever stood in the relationship of loco parentis to the insured for a period of at least one year prior to his entry into the armed services of the United States.

2. That the Court erred in finding since there was no evidence before it, that Rose E. Hoth last bore the relationship of loco parentis to the insured for a period of at least one year prior to the entry of the insured into the armed services of the United States.

3. That the Court erred in finding, since there was no evidence before it, that there were two paternal parents who last stood in the position of loco parentis to the insured for a period of at least one year prior to his entry into the armed services of the United States.

4. That the Court erred in finding, since there was no evidence before it, that William E. Hoth

ever stood in the relationship of loco parentis to the insured for a period of at least one year prior to his entry into the armed services of the United States.

5. That the Court erred in finding, since there was no evidence before it, that William E. Hoth last bore the relationship of loco parentis to the insured for a period of at least one year prior to the entry of the insured into the armed services of the United States.

6. That the Court erred in finding, since there was no evidence before it, that Guy F. Whitman ever stood in the relationship of loco parentis to the insured for a period of at least one year prior to his entry into the armed services of the United States.

7. That the Court erred in finding, since there was no evidence before it, that Guy F. Whitman last bore the relationship of loco parentis to the insured for a period of at least one year prior to the entry of the insured into the armed services of the United States.

8. That the Court erred in finding for the defendants, Rose E. Hoth, William E. Hoth and Guy F. Whitman.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ KENNETH J. SELANDER,
Assistant United States
Attorney.

[Endorsed]: Filed March 17, 1952.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD

Comes now the appellant, United States of America, and designates the following as the record to be prepared on appeal in the above-entitled cause:

1. The entire record as transmitted by the Clerk, United States District Court, Western District of Washington;
2. Points to be Relied Upon on Appeal; and
3. This Designation of Record.

/s/ J. CHARLES DENNIS,
United States Attorney;

/s/ KENNETH J. SELANDER,
Assistant United States
Attorney.

[Endorsed]: Filed March 21, 1952.